

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
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Date:
December 03, 2007

In Re:

Legend:

- Taxpayer 1 =
- Taxpayer 2 =
- Trust =
- Law Firm =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Year 5 =
- Year 6 =
- Year 7 =
- Year 8 =
- Year 9 =
- Year 10 =
- Year 11 =
- Year 12 =
- Year 13 =
- Year 14 =
- Year 15 =
- Year 16 =
- A =

Dear _____ :

This is in response to your letter dated December 20, 2006, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration

Regulations to make allocations of generation-skipping transfer (GST) exemption to a trust.

The facts submitted and the representations made are as follows. In Year 1, Taxpayer 1 and Taxpayer 2 created Trust. Trust has GST potential. Also in Year 1, Taxpayer 1 and Taxpayer 2 transferred assets Taxpayer 1 and Taxpayer 2 valued, in the aggregate, at \$ A to Trust.

Taxpayer 1 and Taxpayer 2 retained Law Firm to prepare their Year 1 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. On their Forms 709, Taxpayer 1 and Taxpayer 2 consented to treat gifts made by either of them in Year 1 as made by both pursuant to § 2513. Law Firm, in preparing the couple's Forms 709, failed to allocate or failed to advise Taxpayer 1 and Taxpayer 2 to allocate their respective GST exemptions to the Year 1 gifts to Trust. The Forms 709 were timely filed.

In Year 2 through Year 15, Taxpayer 1 and Taxpayer 2 made cash gifts to Trust in amounts that were less than the annual exclusion amount under § 2503(b). Taxpayer 1 and Taxpayer 2 did not file Forms 709 for Year 2 through Year 15 because they mistakenly believed they were not required to file Forms 709 in order to allocate their respective GST exemptions to these gifts.

The failure to allocate GST exemption to the gifts to Trust was discovered by Law Firm. Taxpayer 2 died in Year 16. It has been represented that Taxpayer 1 and Taxpayer 2 have sufficient GST exemption currently available to allocate to the gifts made to Trust in Year 1 through Year 15.

Taxpayer 1, individually and as executor for the estate of Taxpayer 2, is requesting an extension of time to allocate Taxpayer 1's and Taxpayer 2's GST exemptions to the gifts made to Trust in Year 1 through Year 15, and that the GST exemption allocated to each gift be based upon the value of the gift as of the date of the gift.

Law and Analysis:

Section 2501 provides that a tax, computed as provided in § 2502, is imposed for each calendar year on the transfer of property by gift during the calendar year by any individual, resident or nonresident.

Section 2503(a) provides that the term "taxable gifts" means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (§ 2522 and following).

Section 2503(b) provides, in relevant part, that in the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year,

the first \$10,000 of such gifts to such person shall not, for purposes of § 2503(a), be included in the total amount of gifts made during such year.

Section 2513(a)(1) provides, in relevant part, that a gift made by one spouse to any person other than his spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

Section 2513(a)(2) provides that § 2513(a)(1) applies only if both spouses have signified their consent to the application of § 2513(a)(1) in the case of all gifts made during the calendar year by either while married to the other.

Section 25.2513-1(a) of the Gift Tax Regulations provides that a gift made by one spouse to a person other than his (or her) spouse may, for the purpose of the gift tax, be considered as made one-half by his spouse, but only if at the time of the gift each spouse was a citizen or resident of the United States. For purposes of this section, an individual is to be considered as the spouse of another individual only if he was married to such individual at the time of the gift and does not remarry during the remainder of the "calendar period" (as defined in § 25.2502-1(c)(1)).

Section 25.2513-1(b)(1) provides, in relevant part, that the provisions of this section will apply to gifts made during a particular "calendar period" (as defined in § 25.2502-1(c)(1)) only if both spouses signify their consent to treat all gifts made to third parties during that calendar period by both spouses while married to each other as having been made one-half by each spouse. Such consent, if signified with respect to any calendar period, is effective with respect to all gifts made to third parties during such calendar period. Where the consent is signified by an executor or administrator of a deceased spouse, the consent is not effective with respect to gifts made by the surviving spouse during the portion of the calendar period that his spouse was deceased.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2631(a) (in effect at the time of the transfer) provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2632(c)(1) provides, in relevant part, that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero.

Section 2632(c)(3)(A) provides that for purposes of § 2632, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust. Section 2632(c)(3)(B) defines the term "GST trust."

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) – (A) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an ETIP, its value at the time of the close of the ETIP, and (B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an ETIP, on and after the close of such ETIP.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of the gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of the GST tax.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer 1 and Taxpayer 2's estate are granted an extension of time of sixty (60) days from the date of this letter to allocate Taxpayer 1's and Taxpayer 2's GST exemptions to gifts made to Trust in Year 1 through Year 11. The allocations will be effective as of the date of each gift, and will be based on the value of each gift on the date given. Pursuant to § 2632(c), Taxpayer 1's and Taxpayer 2's GST exemptions were automatically allocated to the gifts made to Trust in Year 12 through 15.

The allocations should be made on Forms 709 for Year 1 through Year 11 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the returns.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied as to the value for Federal transfer tax purposes of any gift to Trust.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William P. O'Shea

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes

cc: